

Quid Novi

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McGILL UNIVERSITY FACULTY OF LAW
FACULTE DE DROIT UNIVERSITE MCGILL

January 18, 1984
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Scott's Constitutional Im-pass

by Pearl Eliadis

This term, Prof. Scott's Constitutional Law course has established a new high in highs. With a failure rate of almost 36%, his section of constitutional law tops the nearest contender (Obligations with Prof. Cr peau), by over 100%, and is nearly three times higher than the second place constitutional law course, Prof. de Mestral's section. What happened?

What's "Reasonable"?

One would, initially at least, expect that the faculty would be surprised by the high failure rate, which is about ten percent higher than Prof. Scott's own norm for the mid-term exam. One professor expressed some surprise, but was quick to point out that the bell curve is an unacceptable alternative. Associate Dean Simmonds did not feel that there was such a thing as an "unreasonable" failure rate. He has seen similar, although equally unusual,

failure rates at other Canadian law schools. He also pointed out that the faculty assumes that the professor in question has properly exercised his or her discretion in marking exams and that Prof. Scott is particularly conscientious about the marking process.

"Academic Prostitution"

Prof. Scott himself was adamant about his own professionalism, emphasizing that there should be no student input into the discretionary process of marking exams at any level. Indeed he stated that such participation, similar to student participation in Faculty Council, would be "academic prostitution of the first order."



What's "Unreasonable"

But doesn't he feel that the failure rate was unreasonable? Not surprisingly, Prof. Scott's answer was an unequivocal "no". He said that he goes over the types of problems that can be expected in exams repeatedly

during the course. "I do not enjoy failing students", he said, "in fact, I was depressed and disappointed after marking these exams." He added that students rarely realize how bad the bad papers are, and he will not pass a student who, in his opinion, fails to perform "adequately". This necessarily leads to the conclusion that Prof. Scott feels that there is no such thing as a politically acceptable failure rate, whether that be express or implied. He does not deny that his standards may be a good deal higher than those of other professors, but he sees no reason to lower them for that reason alone. Furthermore, he noted that his final exam marks are quite a bit higher, so that the overall failure rate is at least within the norm of other courses in the faculty.

Report From Senate

by Tim Baikie

In its last two meetings last term, Senate dealt with three major issues. The first (and least controversial) was a re-structuring of the Physical Education Programme. The second was the sessional dates for 1984-85 - for the first time there will be a university-wide study break in February. The most controversial was a debate on the de Voe-Holbein affair.

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Announcement

Aryeh Neier, chairman of "Americas Watch", a U.S. group monitoring human rights abuses in Central America, will be speaking on "American Foreign Policy and Human Rights", Wednesday, Jan. 25 from 12:00-2:00 in the Moot Court. Presented by the International Human Rights Advocacy Group.

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Course	Professor	Percentage Failure	Class HPA**
Essays*		0	2.13
Problems in Constitutional Law*	Birks	0	2.07
EEC Law I*	Letemendia	0	1.86
Native Peoples & the Law*	Hutchins	0	1.80
Advanced Torts	Somerville	0	1.74
Comparative Medical Law*	Somerville/Kouri	0	1.50
Health Law & Politics*	Warren	0	1.46
Jurisprudence I	Trakman	0	1.45
Law & Psychiatry	Sklar	0	1.42
Government Control of Business	Grey/Green	0	1.34
Canadian Legal History	Baker	4.3	1.30
Business Associations	Sarna	0	1.29
Business Associations	Groffier-Atala	0	1.29
Civil Liberties	Klinck	0	1.25
Estate Planning (Tax III)	Fortin	4.5	1.23
Intro. to Comparative Law*	H.P. Glenn	0	1.21
Labour Law I*	LeBel	0	1.17
Labour Law I	Heenan	0	1.12
Judicial Rev. of Admin. Action	Grey	0	1.06
Foundations	H.P. Glenn	4.1	1.06
Public International Law	Vlasic	0	1.01
Insurance	Trakman	0	1.01
Banking	Scott	2.9	1.00
Intellectual & Industrial Prop.	Kierans	4.4	0.99
Property I	Godin	2.4	0.98
Int'l Business Transactions	de Mestral	0	0.96
Restitution	Stevens	3.8	0.88
Judicial Law & Evidence	Morissette	5.2	0.85
Land Use Planning*	J. Glenn	0	0.83
Foundations	Tancelin	5.3	0.83
Air & Space	Magdelénat	1.5	0.83
Business Associations	Simmonds	0	0.78
Banking	Cobbett	4.8	0.77
Int'l Law of Human Rights	Humphrey	4.2	0.77
Tax I	Durnford	1.6	0.76
Obligations I	Burman	5.4	0.72
Corporate Finance	Casey	0	0.70
Property IA	Stevens	6.8	0.69
Constitutional	Birks	4.9	0.67
Property I	Brierley	5.1	0.66
Property IA	J. Glenn	3.8	0.54
Contracts	Baker	14.8	0.52
Contracts	Bridge	13.2	0.51
Torts	Foster	10.2	0.50
Equity & Trusts	Shandro	7.4	0.46
Civil Procedure IIA	Kelly	13.6	0.42
Constitutional	de Mestral	12.3	0.39
Property IA	Foster	8.5	0.31
Obligations	Crépeau	16.5	0.30
Consumer Law	Boodman	6.7	0.30
Property I	Cantin Cumyn	10.3	0.28
Constitutional	Scott	35.7	0.13
Comparative Private Law Probs.*	Caparros	0	0.00

*Courses with 15 or fewer students

**HPA Calculation: A+ - 4
A - 3
B+ - 2
B - 1

C+ - .5
C - 0
F - 1

Announcement

There is a fourth-year class meeting being held Thursday, Jan. 19 in Room 102. The topics to be discussed are the elusive class photo and a graduating class gift. Please attend!!

Prodigal son returns

by F. Rick Goldman

While habitués of C.D.H. were scurrying about last Wednesday in preparation for the speechless horrors of you-know-what, a "Mzungu" quietly appeared in the Moot Court at noon and discussed with about 40 people his experiences in the Ssesse Islands of Uganda.

If it puzzles you to hear that someone as exotic as a Mzungu slipped virtually unnoticed through our halls, it should surprise you still further to learn that all our Professors are Mzungus (bet that's one qualification you didn't hear last week) and you are most likely one as well.

You see, Mzungu is the word used by the Buganda people of Uganda to describe white westerners ("Honkies"). The Mzungu who spoke last week was no more exotic than carpenter-turned-LSA Prez-turned-carpenter Campbell Stuart, who graduated from our beloved faculty in 1982, and is presently working on a development project in Lake Victoria, Uganda.

His speech had three aims: To explain the project for those interested, to solicit contributions, and to disabuse the Dean and Prof. Baker of the notion that he is articling for the East African branch of Stikeman, Elliot.

Campbell's project, funded by the Canadian International Development Agency (CIDA) and private contributions, is situated on the island of Bukasa, which has a population of 3,000, and a surrounding population of 30,000. It is only 30 miles from the infamous Entebbe Airport.

Campbell explained that the project involves work in three areas: medical, educational, and agricultural. The brainchild of Dr. Jerry Kambites and his wife Sarah (who plan to stay on the Island indefinitely), the project got started six months ago when the Kambites, Campbell and another former McGillite, Liz Ulin, arrived with \$100,000 worth of equipment and supplies. Included was everything from hammers and nails to two X-ray machines, donated by a local hospital.

Jerry Kambites generally sees between 20 and 50 patients a day, but sometimes sees over 100. Most of the diseases he treats have either been eradicated in the west (e.g. leprosy, T.B.) or could be prevented with very simple measures (eg. malaria, sand flus - which infect children through the soles of the feet because the parents can't afford shoes). Campbell noted that if anyone knows of a potential donor of antibiotics, they should contact him through the LSA.

One of the most serious (and common) deficiencies of development projects, according to Campbell, is that they ship in western experts who impart western technology and methods, and after they leave everything falls apart. This is why each part of the Bukasa Project aims to pass on to the local people skills which can be used with local materials. For example, every morning before starting work on the school house, Campbell meets with several apprentices to provide basic carpentry instruction.

Another factor favouring the success of the Bukasa

project is its isolation from the Mainland, where the political and social upheaval rivals that of the "Big Daddy" Amin era.

Wednesday's audience was treated to a sublime selection of slides of the Island, and of Campbell's travels in East Africa. Included were some heart-breaking near-miss action shots (eg. "See that big tree at the left side of the frame? There's a huge elephant just 10 feet beyond it out of sight").

Campbell closed with an appeal for contributions to the project, noting that CIDA funding is now exhausted, and that even a small contribution can make a big difference. For example, a few dollars for files (not the paper variety) allow workers all over the island to keep their saws sharp, increasing efficiency ten-fold. And just \$100 pays a year's wages for a local worker on the school house.

News Flash: Law Faculty Bukasa Island Fund Drive Established. Faculty, Students and the Quid Novi will be pulling together to raise funds for the Bukasa Island Project. Students wishing to make contributions may give them to Richard "Solidarity Brother" Janda (522-7997) and Faculty contributions will be collected by Prof. "Big Daddy" Stevens. As well, there will probably be a contribution box at future LSA events. Most importantly, the Quid Novi will donate space each week to print the names and contributions of all those who donate \$5 or more. An irresistible opportunity to feed your ego and soothe your conscience! Of course, publicity-shy Faculty members are free to act anonymously....

Quid Novi

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Editorial by Pearl Eliadis

Constitutional Maw

When I spoke to Prof. Scott, I could not help thinking that everything he told me about his 36% failure rate was reasonable. After all, everyone has the right to expect high standards from ones' students. Far be it from me to tell a competent professor that his standards are too high. In addition, any damning words one might have for a professor who gives marks that are too low also apply in principle, if not in kind, to professors whose marks are too high. In addition, Prof. Scott genuinely wants his class to do well and tries his utmost to effect that result.

However reasonable his views on these matters might be, I cannot help but feel that such a high failure rate is, indeed, unacceptable. Prof. Scott's competence to teach the course and his knowledge of the subject material are neither in question nor at issue. Nor is there anything about Prof. Scott himself that is at issue. His course in Banking, for example, has a failure rate well within the norm. However, the level at which he appears to be teaching a first-year Constitutional Law class might be problematic. Given that Constitutional Law is one of the most difficult first year courses, and that students are still unaccustomed to the methodology, jargon, and legalese accompanying that subject matter, is it possible that Prof. Scott worsens the existing difficulties by imposing standards that are unrealistic? With all due respect to Prof. Scott, I also cannot accept that he is so superior to all the other faculty members that the failure rates in his course should be accepted without even an official shudder.

What are the alternatives? To have Prof. Scott teach an advanced constitutional law course or a course in statutory interpretation might be one alternative. Another would be to alert students to the "special" nature of Prof. Scott's course. Consideration of a student's suggestions by administration would, of course, recognize student input in the fashion that Prof. Scott labelled "academic prostitution of the first order." If so, just sign me

An Academic Prostitute

evidence

Cont'd from p. 6

who do not fall into either of these categories but whose schedules will be seriously disrupted should not despair. It should be borne in mind that Prof. Sklar can decide to waive the prerequisites for Evidence IIA in individual cases and that if a student is in a difficult situation, he or she should consult both Prof. Sklar and Associate Dean Simmonds.

Prof. Simmonds explained that it was his fault that Prof. Jane Glenn was not aware of the imminent implementation of the new evidence course. He has apologized to Prof. Glenn and regrets the inconvenience to students. Many students have expressed the hope that in future, the faculty's left hand will know what the right is doing in order to avert similar problems in the future.

la cleptomanie

SENATE

Une grave maladie semble sévir à la Faculté....

Avant que cela ne prenne des allures pestilentielles, je me vois dans l'obligation morale d'en parler. Je commençai à me rendre compte des symptômes de cette maladie lors de mon achat d'arbre de Noël, posé sur le "Porter's Desk". En effet, un nombre incroyable de remarques encourageantes fusa de toutes parts: "es-tu folle? tu vas te le faire voler, ça ne sera pas long" - "ouais, il va bien rester une journée, tout au plus" etc. etc.... Je décidai néanmoins envers (en vert) et contre tous de le poser, pensant que ça aiderait à créer un climat de Noël. Quand je revins en janvier, je ne dus que constater la triste vérité: les plus beaux ornements du sapin n'y étaient plus... L'arbre y était encore cependant (il faut dire que voler un arbre de Noël et s'en aller avec celui-ci ne sont pas des actes passant totalement inaperçus... A bien y penser cependant certains ont des porte-documents si volumineux ou volumineux?! qu'un arbre pourrait facilement s'y faire dissimuler!).

Cet incident me fit réfléchir et me rappela d'autres expériences, toutes aussi malencontreuses. L'an passé une de mes amies se fit voler tous ses livres neufs dans son casier. Moi-même, je dus me résigner à retrouver une bourse sans porte-monnaie lors d'un party de droit... Je pourrais citer de nombreuses autres expériences semblables... Une question me vient toutefois à l'esprit: sommes-nous dans une faculté de droit, où les étudiants sont supposés faire preuve d'un "sens élevé de la justice" ou dans un endroit très propice au développement de cette maladie qu'est la cleptomanie?

Sylvie Lévesque

Cont'd from p. 1

The de Voe-Holbein affair is an extremely complicated matter dealing with ownership of patents and allegations of impropriety on the part of members of the Microbiology and Immunology Department.

Without going into all the details (which would require far more space than the Quid would ever give me), Senate established a committee to study the general question of research and patent policy (which may or may not overlap with an already existing University committee).

An amendment have the committee deal specifically with the allegations of impropriety was defeated. There were several compelling arguments against the

Why McGill??

romance and the like." I was confused.

"Why aren't you there then?" I asked.

"I can't paint," he said.

I laughed out loud, for now my prayer had been answered. I finally saw the light. No longer would those two pernicious words bring despairing ambiguity to my life.

What he was implying, if my reasoning is correct, is that if one had to ask one's self why one was doing something, or for that matter, why one was doing it wherever, and if one found a better alternative as an answer, then one would surely also find unhappiness.

At that moment, I thought about the print I have of the Parliament Buildings painted by Claude Monet, my favourite Impres-

amendment. It was felt that the committee would turn into a witch hunt, that unsubstantiated charges could be made with no protection for those accused, and that there might be interference with actions now before the courts.

Nevertheless, I supported the amendment. This was not because I felt that the allegations were necessarily true (I don't know whether they are or not) but because of the intense publicity this has generated. There have already been several articles and editorials in The Gazette on this subject and I feel the University's reputation has been somewhat damaged, and this would be a way to clear the air. Despite the vote of Senate, an investigation was launched by the Principal over the Christmas break.

sionist. The print hangs on the wall in my empty apartment. It's the only thing I have of value, except for my paint brushes.

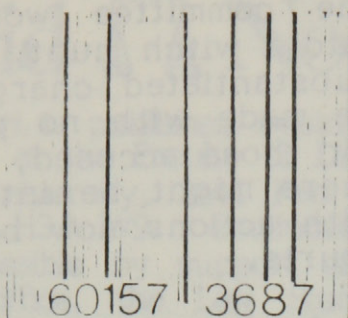
Do you think anyone ever asked him. "Why Paris?" I chuckled to myself. He probably would have retorted, "I should be in Strasbourg, studying law".

Activités Sociales

Plusieurs activités sociales auront lieu cette session. Ainsi, des voyages de ski, une cabane à sucre, des "beer & pizza", "vin & fromages" et bien sûr de nombreux "parties" seront organisés. De plus, le 3 mars aura lieu le Banquet annuel de la Faculté, à l'Hôtel du Parc....

N'oubliez pas que le premier party de l'année 84 est le 19 janvier au Union Ballroom... Les profits iront aux "common law games"...

Sylvie Lévesque



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Evidently A Mess?

by Pearl Eliadis

The recent furore over the fledgling Evidence course has left a lot of students wondering exactly what happened and how it affects them. The story goes something like this.

In order to streamline the seemingly myriad courses teaching evidence, a National evidence course was created, and is being offered for the first time this term. The problems begin for those students who had signed up for the course with the intention of using the credits as Common Law semi-obligatories. At the outset, this did not seem possible because the new course was earmarked as a National course.

The plot thickened when Prof. J. Glenn, who was unaware of the decision to implement the new course, informed the Curriculum Committee that the new course would not be offered until next year. In addition, most students who had signed up for the course with the intention of fulfilling Common Law semi-obligatory requirements had not noticed the warning on the early registration materials that the course could become a National course this term. The result? Common law students planning on graduating would be up the proverbial creek. Civil law students who had already taken Judicial Law and Evidence and Criminal Procedure with Prof. Proulx would be forced to take a redundant course in order to qualify for Evidence IIA, a common law course for which the new course is a prerequisite. Obviously, many schedules were disrupted and not a few noses put out of joint.

Once the problems were discovered, however, solut-

tions were forthcoming. Third and fourth year common law students currently in the course can have it count toward semi-obligatory common law credits. As a result, they will not have to take an extra Common Law course in order to fulfill their requirements, espe-

cially if they also want to take Evidence IIA. Students who have taken both Judicial Law and Evidence and Criminal Procedure with Prof. Proulx (but not Profs. Cohen or Healy), automatically qualify for Evidence IIA, without having to take the new course. Students

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Job hunting

Now that first term marks have been released, and everyone is more or less happy (as the case may be) with their performance, it is time to use those marks for positions next summer. According to a recent meeting of the Law Society of Upper Canada held November 17, Toronto firms should begin their interviews for summer positions only after first-term marks are published.

The November meeting was held in response to concerns over interviews for articling positions. The Dean offered to pay transportation and one night's accommodation for the V.P. Common Law to attend. Discussion ranged over several topics and here are some of the meeting's highlights.

The first issue dealt with attempts to slow down the insanity of the first of two interviewing weeks in Toronto. The interests of large and small firms clashed. Large firms depend on their size and notoriety to pull in quantities of the quality students they desire, while the smaller firms must "stand in line" for interviewees. Students at the meeting sided with the smaller firms, preferring a more orderly process. Two suggestions were sent to the regular meeting of the Law Society. A narrow ma-

jority of firms and all students were in favour of a one-week moratorium on all offers, to allow students and firms to see more of each other.

A second topic dealt with the practice of accepting positions with one firm and then going with another (often larger) firm. There was universal disapproval of this, and students are warned to avoid the practice.

Thirdly, for those who asked me if Toronto could arrange its interview times to coincide more closely with other Ontario cities and Vancouver -- the answer is "no". The Chairman of the legal education committee for the Law Society assured all present that one metropolitan area is already proving a challenge to organize.

Finally, on the question of summer positions, I advise caution. Firms who do summer hiring usually use it to reduce a student's desire to look elsewhere for articling positions. Know what you are looking for in a firm and seek it out. For those looking in the Toronto and Montreal markets, it seems certain that although Montreal firms tend to hire in October, January will remain the month to seek summer employment in Toronto.

Todd Van Vliet
V.P. Common Law

Why McGill?

by Richard Quon

There was a time long ago, and before many vacuous conversations spent, that I used to fear this question. It intruded into my every private moment. Even the local *dépanneur* operator forced me to confess my rationality. And almost every legal novice included the proverbial question in their daily dialogue. Why did everyone want to know? Were they as unsure as me? At times, I wondered if anyone really knew! Was it something *a priori* to be discovered, or something universal and innate in the transcendental ego?

Many hours were spent in profound thought, only to result in despair, but maybe some things were just not meant to be. Thereafter, and with some pretension, I continued without complications. I was here in Montreal in palaces of frolic and vibrant spirit, having the time of my life.

Maybe if I had made the effort of opening a book that first month, I would not have been so apprehensive of that question. Was it to be found in that obscure passage in Dawson? Unfortunately, I never had the motivation to unlock that classical work from its plastic bondage. So, I let the perennial two-worder ("Why McGill") lambaste my desolate mind. Of course, I was not completely defenseless, because I countered with the now memorized verbiage. "It's the National program, the bilingual opportunity, and the reputation". I even concocted my own trivial responses. "It's the smallest Common Law school." And my favourite. "It has the lowest tuition".

Of course, I never told anyone why I really came to Quebec. It doesn't relate to academics. It is destiny and romantic adventure more than anything else. But who would believe someone from small-town Alberta? Especially someone who only recently gave up gum boots, sheep, and throwing cow pies.

However, during one party I reached my limit. I became fed up with those two superficial and empty words. I could no longer tolerate the bullshit -- or, as they say in small-town Alberta, the spurious social intercourse of mindless drivel. I was not in Montreal to encounter such abuse.

It was only a month and I was overcome with depression. So much so, that I contemplated packing it in and enrolling in the School of the Arts. I could not escape them. Those two short words were persistent, like a pestilence of unwarranted magnitude. They and their accompanying question mark appeared in my dreams, in my alphabet soup, and in the obscene phone calls that I was receiving. It really became annoying. However, I maintained an intrepid face. Even the letters I wrote home were full of lies and optimism. However, I should have written:

"Dear Mom: I can't study like everyone else. They spend six hours a night with their books. Why? I'm depressed, because everyone wants to know why I'm here. No one talks to me at school except when they have this urge to irritate me with those two perpetual words that now have crystallized into a Peel Street maxim. But I am going to conform, Dad, and you will be proud

of me. I know you think this is the best place to be. If only that cute upper-year (from beautiful Woodstock) didn't spit those two provocative words in my face, mocking me with her beguiling smile, I could probably handle it.... Goodbye for now. Yes, with love. P.S. If you don't hear from me, look for me at the School of the Arts."

Well, the months passed, the lectures passed, and we became indoctrinated into a style of regimentation and ardent pursuit of knowledge. We know that the more one learned, the less one knew. That tandem term of inquiry was hibernating, and I finally felt accepted. My colleagues no longer introduced themselves with...with -- well, you know. Maybe word got around. "Take it easy on him -- he's from Alberta."

I was relaxed, and dreamed of that first examination to test how little I knew. Worried? Not on your life. In fact, I spent the night before the Property exam sitting in a bar, not talking law, but trying to verbalize the bottle in front of me. I was with this other chap, who's also from out West. He, for lack of better words, has this sort of laid-back personality. I was pretty inebriated. But, for some reason I had to ask him -- so out it spurted... Why McGill? There was a deafening silence. I thought for sure he was ordering me a knuckle sandwich. He shot back some tequila, took the plastic straw out of his nose, and grinned from ear to ear. I think he was waiting for this moment.

"I should be in Paris, painting -- scenes of
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